

ADVOCATE IMMUNITY RIGHTS IN INDONESIAN PRINCIPLES, CONCEPTS, LEGISLATION

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ABSTRACT

Advocate Immunity Rights In Indonesian Principles, Concepts, Legislation, the author chose this title because until now the protection of advocate immunity rights as a part of law enforcement in Indonesia, especially with regard to the protection of advocate immunity rights, still feels lacking due to several factors. The main problem in the article is to discuss how the rights of advocate immunity in principles and concepts, the rights of advocate immunity according to Indonesian law, the protection of advocate immunity rights in the Indonesian criminal law system and internal factors, namely advocate organizations including: not only one advocate organization (multibara), different human resources, competition in providing legal services to clients, various angles of legal interests, all of which are due (motivation of Semusin) the needs, interests of each advocate organization, external factors including not yet there is an understanding regarding the right of immunity attached to advocates with other law enforcers, statutory products that do not yet provide limitations on the right of immunity possessed by advocates with good ethics who carry out their roles and functions as law enforcers, the stereotyped way of thinking of justice seeker who is still the people understand about the immunity right of a person who works as a lawyer. The methodology used in this research is literature review research, which will use a descriptive research type with a literature approach, based on the existing reality.

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1. INTRODUCTION

Advocates as part of the elements of the justice system are one of the pillars in upholding the rule of law and human rights. The 1945 Constitution has guaranteed the rights of a citizen of the Republic of Indonesia precisely in the provisions of Article 28 D paragraph (1) one which states that everyone has the right to recognition, guarantees, protection and legal certainty that is fair and equal treatment before the law.

According to Soeroso, he argues that the notion of law is a set of social order. The characteristics of the law are ordering, prohibiting, and forcing by imposing binding legal sanctions on anyone who violates.¹

Advocates in implementing and carrying out their duties and work are to realize justice and truth based on applicable legal principles that are guaranteed and protected by law. In the current development of Indonesian law. Advocate profession is not a new or foreign profession in Indonesia. The Advocate profession is a profession that has been around for a long time.

¹ Soeroso. R. *Introduction to Law*, (Jakarta: Sinar Graphic. 2016), p. 38.

This began in 1847 with the introduction of a rule governing Advocates. The rule is "Reglement op de Rechterlijke Organisatie en het Beleid der Justitia in Indonesia" (S. 1847 no 23 yo S. 1848 No. 57). The Advocate profession is a profession whose services are needed by everyone in line with the increasing legal awareness in society.

The need for legal services from an Advocate includes providing legal advice, providing legal consultations, legal opinions, legal audits, defense inside and outside the court as well as providing assistance in criminal cases or even in trade and labor arbitration.

The Advocate profession is considered an honorable profession (*Officium Nobile*), because a lawyer defends someone based on justice and truth regardless of economic background, race, ethnicity, religion, skin, culture, economy, political choices, gender and ideology. Advocates in Indonesia are considered "agents of law development" or legal development actors who incarnate as agents who develop law in society.

Purnadi and SoerjonoSoekanto that law enforcement is an activity of harmonizing solid value relationships and embodying the attitude of the final set of values elaboration to create (as social engineering), maintain and maintain (social control) social peace. Good law enforcement is that which involves harmonization between values and norms and real human behavior. The values and rules contained in the Law must be applied (must be harmonized) with real human behavior.²

In Law Number 18 of 2003 to be precise in Article 1 paragraph 1 states that an Advocate is a person whose profession is to provide services and legal assistance both inside and outside the court where has complied with the provisions of the legislation. Advocates provide legal assistance to clients, the goal is to guarantee the rights of clients before the law. Advocates need freedom in carrying out their duties (legal services) and defending (litigation). Defending the legal interests of his clients both in the realm of court and outside the realm of court which is certainly based on the Act.

Justice as (fairness) begins with one of the most general choices that people can make together with the choice of the first principles of the conception of justice which govern further critique and reform of institutions. The form of justice as fairness is to look at the various parties in the initial situation as rational and equally neutral. This does not mean that these parties are selfish, namely individuals with certain types of interests in wealth, (prestige) and domination.

The job of an Advocate certainly gets challenges and temptations. It is undeniable that the Advocate Profession is a very risky profession, it is not uncommon for Advocates to become victims³ in carrying out its own duties. On the other hand, the public's view of the Advocate profession sometimes creates contradictions, and it is not uncommon for the public to think that the Advocate profession is a bad profession that defends crime.

The essence of what an Advocate defends is the rights of his clients before the law which are in line with the legal principle of "Presumption of Innocence". In addition, the Advocate is also a Judge's assistant in seeking and discovering the true values that exist in a client that cannot be conveyed both in court and in the context outside the trial.

In this free and challenging profession, it is not uncommon for the Advocate profession to be tainted by deviant manifestations, of course, carried out by some Advocates in providing legal services to clients and the public. This raises a sense of concern because currently there are many acts of advocates who commit irregularities, malpractice, and even crimes in the judiciary, and this has become a fact of reality.

Immunity means that an Advocate in carrying out his duties to defend and assist clients cannot be prosecuted before the law both in the realm of civil law and in the realm of criminal law. This is based as a consequence of his profession as an Advocate.

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² Binoro Nadapdap, *Corruption Has Not Died*, (Jakarta: PermataAksara, 2014), p. 118.

³ Bambang Heri Supriyanto, *Teaching Materials on Special Crime Law Outside the Indonesian Criminal Code* (KUHP), (Jakarta: Azzahra University, 2014)., Thing. 1.

Immunity means that an Advocate in carrying out his duties to defend and assist clients cannot be prosecuted before the law both in the realm of civil law and in the realm of criminal law. This is based as a consequence of his profession as an Advocate. In the world of law enforcement, such as police, prosecutors, judges, and advocates⁴ commonly known as lawyers or lawyers in English, legal advisers, defenders, legal consultants, and and so on, by society in general. The role of a lawyer, advocate or attorney is not subjective, or a role that only a few people who are advocates want. That role is really necessary and objectively needed.

Explicitly in the weighing section, Letter b of Law Number 18 of 2003 Concerning Advocates⁵ which states: "that the judicial power which is free from all interference and influence from outside, requires the profession of an advocate who is free, independent and responsible, for the administration of justice that is honest, fair and has legal certainty for all seekers of justice in uphold law, truth, justice and human rights".

Advocate profession is a trident in the field of law, primarily to protect human rights that is inherent in every human being who is born in this world indiscriminately including in the realm of law every individual human being has the right to obtain the right to justice with regard to his existence as a human being in society.

Like Curzon that justice as conveyed by Aristotle is Justice is a political virtue by the rules of it, the state is regulated and these rules the criterion of what is right.⁶

It is very important to show the public, ideally the true meaning of law, therefore the duty of an advocate in the judicial process is to uphold the law, not merely to seek victory. Advocates must be dignified, respectable, intelligent, courageous, networked, dedicated and hardworking. Even deeper, advocates must have a sense of love for the profession they have chosen to become their identity.

The main task of an advocate is to uphold the law in order to defend justice seekers, regardless of the risks to their profession. In practice, it is also known as a legal consultant, a person who performs or provides advice and represents other people who are in contact with the client in the settlement of a legal case. Lawyers connote legal professional services that play a role in a dispute that can be resolved outside or inside a courtroom. In the legal profession, the term procedural law is known which is related to procedural law arrangements in the Criminal Procedure Code and the Civil Procedure Code.

According to Ernest Utrecht in R. Soeroso's book, a legal expert from the Netherlands, law is a set of rules that govern life. These regulations can be in the form of orders or prohibitions that regulate order in a society and must be obeyed by all members of society.⁷

In practice, it is not uncommon for advocates to be complained by parties who object to an advocate's statement in carrying out their profession to the police, some are investigated and arrested by the police, and even become convicts based on a court decision when defending the interests of their clients. In carrying out his profession, advocates are always related to the right of immunity that is attached to him when carrying out his profession in defending or assisting justice seekers.

The existence of an advocate is a reflection of increasing public awareness of their rights and legal obligations, although it cannot be denied that the advocate profession is also a direct product of alienation and a form of community attitude towards the legal system and formal justice.

Philosophically, advocates as law enforcers and guardians of the constitution must be able to practice the values contained in Pancasila and the Preamble to the 1945 Constitution of the Unitary State of the Republic of Indonesia. Advocates serve to provide advice and represent their clients in legal matters in order to uphold the principle of the presumption of innocence (presumption of innocence) and is responsible for fighting for truth and the principles of justice.

The problem is the existence of the advocate profession as an honorable profession (*officium nobile*) and its position as a law enforcer, always respecting law and justice which are the basic needs of humanity; There cannot be humane coexistence without law and justice. Advocates as one of the Indonesian law enforcement officers tasked with defending law and justice. The function and duties of an advocate are a noble duty to defend a humane human community.

⁴https://www.researchgate.net/publication/344710353_HAK_IMUNITAS_ADVOKAT_DALAM_MENJALANKA_N_PROFESI

⁵ Law Number 18 of 2003 Concerning Advocates, (Tangerang: SL Media, 2011), p. 10.

⁶ Achmad Ali, *Revealing Legal Theory and Justice Theory Judicial Prudence) Including Interpretation of Laws (Legis Prudence)*, (Jakarta: Kencana Prenada Media Group, 2013), p. 217.

⁷ Soeroso. R., *Op.Cit.*, p. 38.

Advocates in carrying out their functions and duties as law enforcers should be given the right of immunity. With the inherent right of immunity, advocates can carry out their functions and duties as an honorable profession and as law enforcers to protect human rights⁸ and create truth and justice in law.

According to Kant's opinion contained in his book *R. Soeroso*, Kant said the meaning of law is the whole of the conditions under which there is the free will of one person so that he can adapt himself to the free will of another person, according to the legal regulations regarding freedom.

Law Number 18 of 2003 concerning Advocates is to serve as a space and "power" to equalize the status of the Advocate profession with other legal professions. Advocates are a vital element for the search for material truth in the judicial process, especially from the point of view of the client's legal interests. Regarding Advocate immunity rights in Law Number 18 of 2003 concerning Advocates, both inside and outside the courtroom, and other rights are contained in the Indonesian Advocate Code of Ethics.

The basis of the right of immunity inherent in an Advocate while carrying out his profession is precisely contained in Article 16 of Law Number 18 of 2003 Concerning Advocates, which states that:⁹ "Advocates cannot be prosecuted civilly or criminally in carrying out their professional duties in good faith for the benefit of the client's defense in court proceedings."

In line with this, the Constitutional Court has expanded the right of immunity possessed by advocates, through the decision of the Constitutional Court Number 006/PUU-II/2004 dated December 13, 2004, which considers:¹⁰ "Law Number 18 of 2003 Concerning Advocates is a Law that regulates the terms, rights and obligations of being a member of an advocate professional organization, contains supervision of the implementation of the advocate profession in providing legal services, both within and outside outside court. The purpose of the Advocate Law, apart from protecting advocates as a professional organization, is most important to protect the public from the services of advocates who do not meet legal requirements or from the possibility of misuse of the services of the advocate profession.

Broadly speaking, there are two duties of an advocate in connection with law enforcement efforts, namely:

1. The duty to defend the interests of their clients in court by providing assistance and
2. Contribution of his thoughts through legal arguments and to act as a consultant from the community.¹¹

Advocate immunity rights are needed to maintain the independence of the advocate profession as an honorable profession (*officiumnobile*) and its position as a law enforcer to create a good law enforcement system and avoid criminalization of the existence of advocates in carrying out their profession. So that the limitation of an advocate's right to immunity when receiving power of attorney from a client, namely an advocate is protected when he carries out his duties in "good faith" and "in court proceedings" an advocate cannot be prosecuted both civilly and criminally in carrying out his professional duties in good faith for the benefit of client defense in court hearings.

This is necessary because several lawyers have been summoned by the police to become witnesses, with the term "reported". If an advocate is questioned by the police, as long as the examination is related to his job or profession, then the police can act beforehand after asking for information from an advocate's organization about whether or not an advocate's work is legal. Except for things that are clearly guilty of what has been regulated in law, such as drunken advocates, narcotics, embezzling client money under the pretext of bribing judges or advocates committing criminal acts outside their profession. Being involved in theft, transactions in illicit goods, obviously these are not ethical violations but criminal violations committed by a lawyer by profession.

However, in fact it is not uncommon for advocates to become legal advisors for corruption¹², corruptors or terrorists then their laptops are also confiscated, it is clear that this is harassment of the advocate profession, where because of the actions that have been committed by a reported client when he has not used the legal services of an advocate it is not a responsibility delegated to the advocate bound by a relationship with the client new from a power of attorney signed by the prospective client and advocate whose legal services will be used by the perpetrator of the crime.

Efforts to protect Advocates in their efforts to fight for justice for their clients and uphold the law must feel safe, protected and not be afraid of threats or intervention from any party as long as the defense is not against the law.

⁸ Bambang Heri Supriyanto, *Law Enforcement Regarding Human Rights (HAM) According to Positive Law in Indonesia*, Al-Azhar Indonesia Journal; Social Institutions Series, Edition Vol. 2, No. 3, March 2011. Pp. 151

⁹ Law Number 18 of 2003 Concerning Advocates, (Tangerang: SL Media, 2011), p. 19.

¹⁰ Constitutional Court Decision Number 006/PUU-II/2004 dated December 13, 2004.

¹¹ Jeremias Lemek, *Seeking Justice A Critical View of Law Enforcement in Indonesia*, (Yogyakarta: Galang Press, 2007), p. 56.

¹² Bambang Heri Supritanto, *Analysis of Advocate Immunity Rights in Carrying out the roles and functions of the advocate profession as Law Enforcement in Indonesia*, lecture session on criminal law specifically on corruption, Jakarta: Azzahra University, August 5 2017, pkl . 18.30 WIB.

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The law will only protect advocates who defend proportionally and are still within the limits of the code of ethics of the advocate profession.

Advocates' right to immunity from being prosecuted both civilly and criminally when defending their clients also protects advocates in carrying out their profession as law enforcers giving advocates guaranteed protection by law so that they can carry out their professional duties independently and free from various interests and interference from other parties.

Starting from the description of the problems mentioned above, the author raised the title in writing this journal, Advocate Immunity Rights in Indonesian Principles, Concepts, Legislation

Based on the background described above, the problem formulated in the writing of this scientific paper relates to the right to legal immunity for advocates who carry out their duties in good ethics, several main issues can be stated as follows:

1. What are the principles and concepts of advocate immunity rights?
2. What is the right of advocate immunity according to Indonesian law?
3. How is the protection of advocate immunity rights in the Indonesian criminal law system?

Purpose and Purpose of Research

Research Objectives

The research objective is the target to be achieved in this scientific work either as a solution to a problem (objective goal) or as the fulfillment of something expected (subjective goal). Therefore the objectives of this scientific work are as follows:

- a. To find out the rights of advocate immunity in principles and concepts.
- b. To find out the right of immunity in Law Number 18 of 2003 concerning Advocates.
- c. To find out the protection of advocate immunity rights in the Indonesian criminal law system.

Purpose of Research

- a. Theoretical uses

In the theoretical context, this research is expected to provide benefits, namely:

- 1) Development of a more in-depth study regarding legal norms regarding the right of immunity of an advocate before the law.
- 2) Obtain an explanation of the principles and concepts behind the meaning of the right to immunity for an advocate with good faith in carrying out his duties and responsibilities as part of law enforcement.

- b. Practical Use

As for the practical perspective, this scientific work is expected to provide benefits:

- 1) Provide conceptual and theoretical foundations for law enforcement agencies in handling cases of criminal acts negating the right of advocate immunity due to the subjectivity of law enforcement agencies in Indonesia such as the police, prosecutors and judges in the Indonesian criminal law system.
- 2) Offering a study material for the possibility of criminal law reform, particularly regarding the imposition of sanctions as a result of removing advocates' immunity rights by law enforcers in Indonesia.

2. RESEARCH METHODS

1. Type of Research

Soerjono Soekanto said that perspective research, is a study aimed at obtaining suggestions on what to do to overcome certain problems.¹³ Materials or materials used in this scientific work were obtained through library research and field research. From the results of library research obtained secondary data while from the results of field research obtained primary data. Primary data is obtained directly from informants or informants through field research, namely from law enforcement officials in the criminal justice system. Primary data is also obtained from the Supreme Court and others.

Through secondary data, it will also be described how the application of laws and regulations, especially regarding Advocate immunity rights, as stipulated in Law Number 18 of 2003 concerning Advocates and the Criminal Code along with several policies related to the existence of Advocate immunity rights

2. Approach method

In the context of writing this scientific paper, the author prioritizes the use of normative legal approaches, namely a research that emphasizes speculative-theoretical steps, but besides that, it also examines the legal norms

¹³ Soerjono Soekanto. Introduction to Legal Research. (Jakarta: University of Indonesia Publisher., (Jakarta: UI-Press, 2006)., p. 10.

that apply in society. However, in order to obtain comparative data, the authors also conduct field research to find primary data that can support or relate to the problem being studied.

"Rony Hanitijo Soemitro provides a definition of normative legal research as follows: normative legal research is a library research, namely research on secondary data, normative legal research emphasizes speculative-theoretical steps and normative-qualitative analysis".¹⁴

3. Research Specifications

In this research, the researcher uses inferential research specifications, namely besides describing the problems that arise, the writer also draws general conclusions from the object of scientific work.

4. Data Collection Techniques

Research data collection and data collection techniques are carried out using 2 (two) ways, namely:

a) Library Studies (Library Research)

Library research activities are carried out to obtain secondary data, which can be in the form of primary legal materials, secondary legal materials, and tertiary legal materials. Based on research on normative law and sociological law, secondary data is the subject of study in this study.

b) Interview (Interview)

Interviews are a way of collecting data using structured (planned) interviews with respondents or informants as the main data using interviews. Interviews are interviewers, respondents, the topic of this scientific work. Field research conducted by conducting interviews.

1.4.1 Form of Research

Normative juridical research in order to analyze scientifically all matters related to law and justice, especially the regulatory system.¹⁵ According to Zainudin Ali, research on legal effectiveness is research that discusses how law can operate in society.¹⁶ The application of article 16 of Law number 18 of 2003 concerning Advocates has resulted in the application of law enforcers in Indonesia to be interpreted in different ways.

1.4.2 Type of Research

This type of research is descriptive in nature, describes the applicable laws and regulations and relates to legal theories in practice related to the problem, and describes and describes the facts that actually occur as a reflection of the implementation of existing laws and regulations. in this case is the right of advocate immunity.

The historical approach is to find out the historical background of the emergence of advocate immunity rights against a legal event and developments related to regulation in dealing with issues of advocate immunity rights that occur today.¹⁷ In terms of legal principles, we will conduct a study from the principle of balance and the principle of justice and examine it from the point of view of legal principles by applying the main legal principles regarding what is fair.

1.4.3 Data Type

The type of data used is secondary data supported by primary data, where secondary data is data obtained directly through literature searches or from official documents, namely law books regarding the right of immunity inherent in an advocate when carrying out his professional duties. Secondary data consists of three legal materials, namely primary, secondary and tertiary law.

1.4.4 Type of Legal Materials

1. Primary Data

Data obtained directly from informants consisted of the Supreme Court, the Ministry of Law and Human Rights, the Advocate Organizations of the Indonesian Advocates Congress and Peradi as well as other advocate organizations.

2. Secondary Data

The data were obtained from the law library consisting of primary, secondary and tertiary legal materials.

a. Primary Legal Materials

Namely the laws and regulations that apply and are related to the subject matter discussed in this Scientific Work, including: the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights, the Criminal Code (KUHP), Law -Law Number 8 of 1981 concerning Criminal Procedure Law, Law Number 18 of 2003 concerning Advocates, Advocate Code of Ethics, Constitutional Court Decision Number 26/PUU-XI/2013 Against Article 16 of Law Number 18 of 2003 concerning Advocates.

¹⁴ Rony H Soemitro, *Research Methodology Law and Jurimetry*, (Jakarta: Gahlia Indonesia, 1990), p. 35.

¹⁵ Salim HS, *Application of Legal Theory in Thesis and Dissertation Research*. (Jakarta: Raja Grafindo Persada, 2013), p. 12.

¹⁶ Zainudin Ali, *Legal Research Methods*, (Jakarta: Sinar Graphic, 2009), p. 30-31.

¹⁷ Rianto Adi, *Legal Aspects in Research*, (Jakarta: Yayasan Pustaka Obor Indonesia, 2015), p. 100.

b. Secondary Legal Materials

Namely legal materials that provide explanations regarding primary legal materials, namely in the form of legal facts, doctrines, legal principles and legal opinions in literature, journals, research results, documents, the internet, and scientific magazines that are relevant to the problem under study.

c. Tertiary Legal Materials

Namely in the form of a general Indonesian dictionary, legal dictionary and all laws and regulations.

1.4.5 Data collection tools

The data collection tool is library research (Library Research) by preparing library data in the form of literature on books or scientific papers in the field of law, especially those concerning the issue of an advocate's right to immunity. Data collection techniques are carried out using 2 (two) ways, namely:

a. Library Studies (Library Research)

Literature study is a data collection technique by reading and reviewing or analyzing library material data which can be in the form of laws and regulations, work reports and research results whose material and content relates to the issues discussed, including books, literature and brochures related to the problem being researched.

b. Interview

Interviews are a way of collecting data using structured (planned) interviews with respondents or informants as the main data using interviews. Interviews are interviewers, respondents, research topics contained in the list of questions and interview situations

3. RESULT AND DISCUSSION

Advocate Immunity Rights in Indonesian Principles, Concepts, Legislation

A. Advocate Immunity Rights in Principles and Concepts.

Regulations outside the Criminal Code relating to the form of an order from a legislator or ruler of a country is a positive law¹⁸ Can be used as a system theory to avoid having a pragmatic view of the law and looking at it in a futuristic, holistic context.¹⁹ This system theory emphasizes the principle of the law itself, namely the principle of law. If the legal principle is related to the field of law, a new meaning can be obtained, namely the legal principle is the basis or thought that underlies the formation of positive law (law making).

The definition of law is a series of regulations regarding the behavior of people as members of society.²⁰ The definition of a victim according to the Big Indonesian Dictionary is a person or animal and so on who suffers as a result of an incident or evil deed. Victims according to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UNO, 1985) are people who individually or collectively have experienced emotional suffering, economic loss or substantial unemployment of human rights through acts of omission which violates the criminal law in force in member countries which also includes legal regulations prohibiting the abuse of power.²¹ The definition of an advocate can be seen in the formulation of various laws and regulations.

According to the Big Indonesian Dictionary, the term Ethics is defined as:²² knowledge about what what is good and what is bad and about moral rights and obligations, a collection of principles or values relating to morality, values regarding right and wrong held by a group or society. Ethics According to the language (etymology) the term ethics comes from the Greek, namely ethos which means customs (habits), inner feelings, inclinations of the heart to do deeds or teach about the nobility of good and bad.²³ According to the term (terminology) of Ethics²⁴ is a branch of philosophy that studies the nature of the concept of value, good and bad, right and wrong and so on and the general principles that justify us to apply it to anything.

Ethics are positive values that guide human behavior or actions. The definition of ethics can be divided into 2 (two) based on the scope of application, namely ethics in a broad sense and ethics in a narrow sense. Ethics in a broad sense is ethics whose values are contained in morals and decency. Meanwhile, ethics in a narrow sense is ethics that is

¹⁸ Lili Rasjidi and Ira Thania Rasjidi, *Introduction to Legal Philosophy*. (Bandung: Mandar Maju. 2002). p. 55.

¹⁹ *Big Indonesian Dictionary*. (Jakarta: Balai Pustaka. 2003). p. 70.

²⁰ Maidin Gultom, *Legal Protection of Children; In the Juvenile Criminal Justice System in Indonesia*, Cet II, (Bandung: Refika Aditama, 2010), p. 3.

²¹ Muhammad Farid et al, *Sexual Violence: In Children and Adolescents.*, (Jakarta: PKBI DKI-YPSI-UNICEF, 1997), p. 26.

²² <https://www.google.com/search?q=ethics+dalam+kamus+besar+language+indonesia&client=firefox-b-d&biw=1093&bih=491&sxsrf>

²³ Yatimim Abdullah, *Introduction to the Study of Ethics*, (Jakarta: PT Raja Grafindo Persada, 2006), p. 4.

²⁴ Faisal Badroen, *Business Ethics in Islam, Second Edition*, (Jakarta: Kencana Perdana Media Group, 2007), p. 5.

intended (applies) to a group or group of people in society. From this description, ethics applied in a narrow sense is what is meant by professional ethics because it only applies to certain groups or groups of people.²⁵

Definition of Profession in general, the definition of profession is a job that requires special knowledge or skills so that people who have the job must attend certain training or education in order to do their job well. While the definition of the profession according to experts, namely:

1. Habeyb states that profession is work with special expertise as a means of livelihood.²⁶
2. Komaruddin, Profession is a type of work which because of its nature requires high knowledge, special and special training.²⁷
3. A.S Moenir, Profession is an intellectual activity that is studied including training that is held formally or informally and obtains a certificate issued by a group or body responsible for the science in serving the community, using professional service ethics with implications for competence in generating ideas, authority technical and moral skills and that nurses assume a level in society.²⁸ From the opinion of several experts that profession is a type of work that requires special expertise and can be learned in training that is held formally or informally.

The definition of the legal profession is one of many other professions, for example the medical profession, accounting profession, engineering profession, and others. The legal profession has its own characteristics, because this profession is in direct contact with carrying out its profession freely, independently and responsibly in upholding the law and protected by law for the sake of the implementation of efforts to uphold the rule of law.

Advocates in the Big Indonesian Dictionary are legal experts who have the authority to act as advisers or defenders in court cases; lawyer.²⁹ According to V. Harlen Sinaga³⁰: Advocates are those who provide legal assistance whether or not they join an advocacy association whether for a living or not, who are called lawyers or legal advisors and practicing lawyers. An advocate is a person whose profession is providing legal services, whether in the form of assisting, defending, or defending other people inside or outside the court who meet the requirements based on the provisions and laws in force.

Based on several legal experts, the definition of Advocate Immunity Rights includes:

1. Meirizal Aulia Chairani concluded that the right to immunity for advocates is not absolute or absolute. Advocate is not a profession that is above the law. Advocates are a noble profession that must be professional in carrying out their duties and profession in providing the best legal remedies for their clients.
2. According to Bentham³¹ contained in Sonny Keraf's book, that the most objective basis is "by looking at whether a particular policy or action brings benefits or useful results or vice versa.
3. According to Gaius Lumbun, the status of an advocate as an independent and free law enforcer who has been equipped with various rights granted by the Advocate Law, including the right to immunity, does not mean that advocates are allowed to ignore professional integrity in carrying out their professional duties. It is necessary to emphasize that freedom in carrying out one's profession must be based on good faith (geode traw), namely carried out on the basis of honesty (honesty) for the sake of upholding justice based on the law while still being guided by the professional code of ethics and laws and regulations.

Opinion of experts and legislation Advocate immunity rights are inherent rights since a person is appointed as an advocate. The Advocate Law has emphasized that "every advocate has the right to immunity or the right to immunity when carrying out his professional duties". Advocates in carrying out their duties and profession "can take or not take actions deemed necessary, can give opinions and are entitled to obtain information or documents from anyone, without having to bear the legal consequences that result from carrying out their professional duties".

Principle is a translation of the Latin "Principium," English, "Principle" and the Dutch "Beginsel," which means the basis of something on which to think or argue. is a consequence of the legal principles contained in the field of criminal law, but must be seen as an integrated unit and used as the basis upon which the rule of law is built.

The Trias Politica principle states that judicial bodies are empowered and hold the authority to adjudicate a dispute. The judiciary is used as (The First and The Last Resort) in resolving disputes, and as if humans are being deceived, only the judiciary is deemed capable of providing a fair settlement.

²⁵ Yudha Pandu, Client and Legal Counsel, (Jakarta: Indonesia Legal Center, 2001), p. 13.

²⁶ Habeyb, Popular Dictionary, in Liliana Tedjosaputro, Notary Professional Ethics in Criminal Law Enforcement, (Yogyakarta: Bigrafi Publishing 1995), p. 32.

²⁷ Komaruddin, Management Encyclopedia, in Liliana Tedjosaputro, Ibid. p. 65.

²⁸ A.S. Moenir, Public Service Management in Indonesia, (Jakarta: PT. Bumi Aksara. 2002), p. 63.

²⁹ <https://kbbi.web.id/advokat>, accessed on February 27 2018.

³⁰ Harlen Sinaga, Fundamentals of the Advocate Profession, (Jakarta: Erlangga, 2011), p. 120.

³¹ Sonny Keraf, Guidance of Business Ethics and Its Relevance, (Yogyakarta: Kanisius, 1998), p. 93-94.

In the context of the application of the legal system in relation to the criminal justice system (criminal justice system), of course it has an impact on the law enforcement process in Indonesia, especially in terms of law enforcement policies, such as the effectiveness of Law Number 18 of 2003 concerning Advocates which, although in essence has a political content demanded by legislators and the international community.

Each settlement must be according to the formal procedure regulated in the procedural law (due to process), as well as giving rights to the parties to use legal remedies institutionally. Apparently, these ideas and hopes have swept the litigation system towards being very formalistic, technical, and expensive. The image of the judiciary as (the first and the last resort) is declining.

With regard to the right of immunity that has been owned by advocates as a privilege in order to carry out their duties, roles and functions to always assist justice seekers so that they get balanced justice. Alignment of roles in the eyes of the law between advocates and other law enforcers in order to make room for justice seekers not to worry, be intimidated and not be intervened by other parties, all of which can be detrimental to the interests of advocates and legal clients who use the legal services of an advocate.

According to Ahmad Ali, adherents of utilitarianism consider that the purpose of law is solely to provide the greatest possible benefit or happiness for as many citizens as possible. This view is based on a social philosophy that every member of society seeks happiness and the law is an instrument to achieve happiness³² Utilitarianism is a moral philosophy that defines the rightness of an act in relation to giving a great contribution to general happiness and considers the most basic goodness to be for the greatest happiness for all citizens (the greatest happiness of the greatest number).

The concept is the most important part of the formulation of the theory. The role of the basic concept of research is to connect the world of theory and observation, between abstraction (generalization) and reality. With regard to the terms used in the assumptions as set forth in this paper, it is hoped that through the various definitions described it is hoped that a clear and principled picture will be obtained. With definitions or understanding towards concepts that are in line with one perception that is used. The importance of definitions to avoid differences in understanding between ambiguous interpretations (dubius) of the terms used:

- a. An advocate is a person who represents his client to take action in accordance with the power given to argue in defense and prosecution in court.³³
- b. The duty of the Advocate Profession is to provide legal opinion, as well as legal advice in order to keep clients away from conflicts, while in the judiciary (demonstrating in court) legal advisers submit or defend the interests of their clients.
- c. Immunity is the freedom of an advocate to take or not take any action and issue or not issue opinions, statements or documents to anyone in carrying out their professional duties, so that an advocate cannot be subject to punishment (criminal and civil) as a consequence of carrying out his professional duties.
- d. Role is a set of behaviors associated with a particular position. Different roles make that type of behavior appropriate in a situation and inappropriate in other situations relatively freely for someone who carries out the role.³⁴
- e. Authority is a juridical ability based on public law. There are also rights and obligations tied to authority, namely that authority is not solely interpreted as a right based on public law, but also an obligation as a public law.³⁵

The concepts used in this study are:

- a. Immunity rights Literally, the term immunity comes from the Latin language, namely *immunitas* which means immunity or things or circumstances that cannot be contested.³⁶
- b. the definition of good faith can be concluded in two things:
 1. This definition can cover general matters, so that it can be applied in civil relations and criminal relations:
 2. This understanding is not related to statutory regulations or legal norms, but more than that concerns the background of the intent and spirit that animates why an act is carried out by an advocate in carrying out his duties. Based on this understanding of good faith, in carrying out their work or duties, advocates enter into a legal relationship (rechts breaking) with other legal subjects, which may give rise to authority or rights.

³² J. G. Murphy, *Marxism and Retribution*. in R.A. Duff and David Garland (Ed.). *A Reader on Punishment*. (New York: Oxford University Press. 1995), p. 48.

³³ Yudha Pandu, *Client and Legal Counsel in a Present Perspective*, (Jakarta: Abadi Jaya, 2001), p. 11.

³⁴ Soerjono Soekanto, *Sociology An Introduction*, (Jakarta: Rajawali Press. 2002). p. 221.

³⁵ Prajudi Admosudirjo, *Authority Theory*. (Jakarta: PT. Ringkjkgkjk eka Cipta, 2001), p. 6.

³⁶ *Legal Dictionary*, (Jakarta: Indonesia Legal Center Publishing, 2006). p. 88.

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- c. Crime of criminal offenses³⁷ are people both individually and collectively who suffer losses both physically and mentally. Emotional suffering, economic loss or substantial damage to their human rights violates the penal laws in force in the country, including regulations prohibiting the abuse of power.
 - d. A victim of crime is someone who has suffered losses as a result of a crime and or whose sense of justice has been directly disturbed as a result of their experience as a target (target) of crime. On the other hand, victims also need to receive legal protection. This means that the sentencing process in this case contains meaning both in a general sense and in a special sense. All citizens must participate fully in social life. Society is considered as a form of an institutionalized belief system (system of institutionalized trust). With a restorative approach, the rights of victims need attention because victims are interested parties who should have legal status in the settlement process. In the criminal justice system in general it is suspected that victims do not receive equal protection from the authorities in the criminal justice system, so that the true interests of the victims are often neglected and even if they do exist they are only fulfilling the administrative system or criminal justice management. The interests of victims often clash with those of the state.³⁸
 - e. The concept of protection for victims rights is also of the view that it is clearly unfair to victims if the state pays more attention to the material, psychological, legal needs of the offenders, while the state does not give responsibility for a decent life for victims.³⁹ In the current positive criminal law, protection is more of an "abstract protection" or indirect protection. This means that with the formulation of criminal acts in legislation so far. This means that in essence, there has been indirect protection (in abstracto) for various legal interests and human rights⁴⁰ victim. It is said so, because a criminal act according to positive criminal law is not seen as an act of attacking or violating the legal interests of a person (the victim) personally and concretely, but is only seen as a violation of "norms or legal order (in abstracto). As a result of victim protection, not directly and (in concreto), but (in abstracto). In other words, the system of sanctions and criminal responsibility is not focused on protecting victims directly and concretely, but only protecting victims indirectly and abstractly. Criminal responsibility for perpetrators is not directly and concretely responsible for the loss or suffering of victims, but rather focuses on personal or individual accountability.
 - f. Justice is about respect for the rights that should be given to justice seekers in court requests. The attainment and granting of these rights is necessary as a tribute to fairness in the process and opportunities to use court legal remedies. Justice⁴¹ is also interpreted from John Rawls justice is a value that embodies the balance between parts in unity between personal goals and common goals.

Advocate profession as a dignified profession (*officium nobile*) or respectable in which the profession is a support and hope for the wider community to obtain justice.⁴² The responsibility of an advocate as a law enforcer, not just a client defender goes further so that the client can find a "win-win solution"⁴³ better so that the next time the client can carry out his daily life in a better, dignified and beneficial way for himself in particular and the surrounding community in general, namely family and family as the smallest part of a community.

An advocate has the right of immunity which makes him immune to the law in the context of upholding the law, as long as it is carried out within the corridors of the applicable provisions. With the right of immunity, advocates are more protected in carrying out their profession and can work more competently. However, the right to immunity also has an impact on advocates arbitrarily carrying out their duties, as if taking cover behind the right of immunity to expedite the methods of defending clients as if they are a shadow of bad law presenting a negative paradigm perspective in society.

An integrated criminal justice system is a system that is unable to balance the protection of interests, both the state and public interests as well as individual interests including the interests of perpetrators of crimes and victims of crimes.⁴⁴ The profession of an advocate or lawyer has one privilege in the form of immunity, not being able to be

³⁷ Muladi, Kapita Selekt Kriminal Justice System, (Semarang: UNDIP, 2002), p. 66, see also in Lilik Mulyadi, Anthology of Criminal Law, Perspective, Theoretical and Practice, (Malang:PT Alumni, 2008), p. 247.

³⁸ Muladi, Hak Asasi Manusia, Politik dan Sistem Peradilan Pidana, (Semarang: UNDIP, 2002), hlm. 176.

³⁹ Rufinus Hotmaulana, Combating Corporate Crime Through a Restorative Approach, a Legal Break through, (Jakarta: Sinar Graphic, 2013), p.131.

⁴⁰ Bambang Heri Supriyanto., Human Rights of the Indonesian and Islamic Worlds, (Jakarta: Azzahra Press University, 2017). p. 160.

⁴¹ Quarter Tutik Point, Introduction to Law, (Jakarta: Prestasi Pustaka, 2006), p. . 228.

⁴² Lawrence M. Friedman, Legal System Perspective of Social Sciences, (Bandung:Nusa Media, 2013), p. 65.

⁴³ Bambang Heri Supriyanto., Mediation as an Alternative for Indonesian Business Dispute Resolution, (Jakarta: Azzahra Press University, 2014). p. 235.

⁴⁴ Rusli Muhammad, Indonesian Criminal Justice System, (Yogyakarta: UII Press, 2011), p. 34.

prosecuted either civilly or criminally for carrying out their duties both inside and outside the court in good faith. This phrase clarifies the immunity of advocates, also emphasizes a balanced moral obligation and responsibility.

The obligation of an advocate to defend his client to the fullest extent possible is intended so that the advocate seeks legal avenues and channels that are available to benefit his client with all the losses of his client despite efforts to devote all his energy, intelligence, ability, expertise and personal and professional commitment.

In this case an advocate bears the obligation not to harm his client even if it is unpleasant or contrary to conscience. The advocate himself becomes unpopular or even hated by the public, the same as the public who hates his client, who may indeed be a crook (sadistic criminal).

Advocates must provide full commitment with high dedication and take all available steps that benefit the interests of their clients. When the client's interests conflict with the interests of other parties, including the interests of personal advocates, it is the client's interests that must be won, of course, as long as they do not conflict with legal rules that take precedence in force.

The principle of justice is closer to fairness, this consists of two parts, namely the interpretation of this situation is also interpreted by Soerjono Soekanto⁴⁵ that justice is essentially based on the principle of equity where everyone gets an equal share. In addition, justice is based on needs, resulting in a page proportion which is usually applied in the field of law, in this justice is also interpreted from John Rawls by Theo Huijbers

The freedom of an advocate to take or not take any actions deemed necessary and any opinions expressed, as well as obtain information or documents from anyone in carrying out their professional duties without having to bear the legal consequences resulting from carrying out their professional duties. What is meant by freedom in the right of advocate immunity is in the context of the impact of the advocate's actions in carrying out his professional duties, both for advocates and for their clients. Advocates and their clients may not be pressured, threatened, subjected to obstacles, fear or treatment that demeans the dignity of the advocate profession.

Advocates' right to immunity is often misunderstood as if all actions taken by advocates for the benefit of clients are protected by law and cannot be legally held accountable. An understanding of the right to immunity regarding the reasons for advocates must be protected with immunity.

The basic reason why advocates are given immunity is because in defending their clients they may not be subject to criminal, civil and administrative penalties as long as their defense is carried out without violating applicable laws, both formal and material.

The factors that impede the implementation of advocate immunity rights are divided into 2 (two), namely:

1. internal factors (advocate behavior that does not respect the code of ethics of the advocate profession and divided advocate organizations) and
2. external factors (other law enforcers (investigators, prosecutors, judges) and the public (opposite parties or victims' families) who do not know or do not understand and/or understand the existence of advocate immunity rights).

B. Advocate Immunity Rights in Indonesian Legislation.

Advocates provide legal services to their clients both inside and outside the court so that advocates accompany or represent the interests of their clients. In carrying out this work, in accordance with Article 16 of Law Number 18 of 2003. Advocates have the right of immunity from being prosecuted both criminally and civilly.⁴⁶

Article 1 point 13 of Law Number 8 of 1981 concerning the Law on Criminal Procedure, states that: "a legal adviser is a person who fulfills the requirements determined by or based on law to provide legal assistance."

The existence of an advocate is no longer just a profession that provides legal services without guarantees protected by law, in Law Number 18 of 2003 concerning Advocates it is regulated in Article 12 specifically regulates supervision of advocates. In Article 12 of Law Number 18 of 2003 concerning Advocates it is stated that:⁴⁷

Supervision of advocates is carried out by advocate organizations. Supervision aims to ensure that advocates in carrying out their profession always uphold the code of ethics of the advocate profession and statutory regulations (paragraphs (1) and (2)).

The methods and procedures of supervision need to be socialized widely including the methods of supervision so that the supervision as stipulated in Article 13 is truly realized. It seems that the regulation in Law Number 18 of 2003 is a type of legal action that is subject to sanctions (penalties). Article 14 of Law Number 18 of 2003 concerning Advocates which reads: "Advocates are free to express opinions or statements in defense of cases which are their responsibility in court hearings by sticking to the professional code of ethics and laws and regulations. Advocates in

⁴⁵ Soerjono Soekanto, *Principles of Sociology of Law*, (Jakarta: CV Rajawali, 1986), p. 21.

⁴⁶ V. Harlen Sinaga. *Op. Cit.*, p. 121.

⁴⁷ *Law Number 18 of 2003 concerning Advocates*, (Tangerang: SL Media, 2011), p. 17-18.

carrying out their professional duties for the benefit of their clients outside of court hearings and in accompanying their clients at hearings at community representative institutions. This provision emphasizes that advocates are free to issue opinions or statements in defending cases for which they are responsible in court proceedings.

The elucidation of Article 14 of the Advocate Law which is meant by "free" is that there is no pressure, threat, obstacle, fear or any treatment that demeans the dignity and profession of the advocate when carrying out his professional duties. Advocates are also free in carrying out their professional duties to defend cases for which they are responsible by adhering to the Professional Code of Ethics and laws and regulations. Article 15 of Law Number 18 of 2003 concerning Advocates namely: [Indonesia, Law of the Republic of Indonesia Number 18 of 2013 concerning Advocates (State Gazette of the Republic of Indonesia of 2003 Number 49, Supplement to the State Gazette of the Republic of Indonesia Number 4288)] Advocates are free to carry out its professional duty to defend cases for which it is responsible by adhering to the professional code of ethics and laws and regulations. The elucidation of Article 15 of the Advocate Law states that what is meant by "immunity" is that advocates cannot be prosecuted both civilly and criminally while carrying out their professional duties. who have freedom in carrying out their duties so that advocates are not bound by bureaucratic hierarchies. In addition, advocates who are law enforcers are expected to be able to side with the interests of society or the public interest.

Regarding the "immunity" of advocates in carrying out their professional duties for the benefit of their clients outside the courtroom and in accompanying their clients at hearings at people's representative institutions, with the hope that this will become a good space for justice seekers to use the services of advocates who need legal advisors to solve legal problems. On the other hand, if an act violates laws and regulations and exceeds the limits stipulated in the advocate's code of ethics in carrying out their duties as an advocate, it is certainly not protected by applicable laws.

Article 16 of Law Number 18 of 2003 concerning Advocates regulates the right to immunity for advocates in carrying out their profession as law enforcement officers. "Advocates cannot be prosecuted both civilly and criminally in carrying out their professional duties in good faith for the defense of clients in court hearings". What is meant by "good faith" in this Article is carrying out professional duties for the sake of upholding justice based on law to defend the interests of their clients and what is meant by "trial hearings" are court hearings at every level of court in all judicial environments.

Advocates are part of the Law Enforcement System in the country of Indonesia and the profession of an advocate himself as one of the law enforcers who has an important role in being able to present a sense of justice and legal balance has been regulated in Indonesian laws and regulations and has become a foothold for legal legality with regard to the existence of a legal role. and its function is guaranteed in a legal product of statutory regulations, namely Law Number 18 of 2003 concerning Advocates.

The content in Article 16 of Law Number 18 of 2003 concerning Advocates states that:

"Advocates cannot be prosecuted, both civilly and criminally for carrying out their professional duties in good faith for the benefit of defending clients" which means that the advocate has the right of immunity from being prosecuted when carrying out his profession in defending clients.

The elucidation of Article 16 of Law Number 18 of 2003 concerning Advocates states that what is meant by "good faith" is carrying out professional duties for the sake of upholding justice based on applicable law in order to defend the legal interests of their clients. Advocates also cannot identify with their legal clients in the legal arena that their clients are facing without pressure or worry and independently without interference from other parties.

The good faith contained in Article 16 of the Advocate Law is good after being reviewed at the Constitutional Court where an Advocate cannot be criminally prosecuted if he carries out his duties in good faith. Logically, even ordinary people or other professions who are not advocates, if they carry out their duties properly, will definitely not be prosecuted. So that Article 16 of Law Number 18 of 2003 concerning Advocates still does not differentiate between ordinary people and an Advocate. Even though Advocates have privileges through this right of immunity.

Explicitly in Article 18 paragraph (2) of the Advocate Law which reads: "Advocates cannot be identified with their clients in defending their client's cases by the authorities and or the public". Can give an illustration that an advocate has the right to defend anyone without exception, even if the client has clearly committed an unlawful act.

After the enactment of Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Code within the criminal justice system space in Indonesia has 4 sub-systems namely:

1. Police sub system,
2. Prosecutor,
3. Court, and
4. Sub-system of Community Institutions.⁴⁸

⁴⁸ Zainal Abidin Farid., Criminal Law, (Jakarta: Sinar Graphic, 1998), p. 25.

After the Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates took effect, among the four criminal justice sub-systems there is an element of the existence of advocates (with various terms) who have a very important role in the criminal justice system in Indonesia in order to present "balance and justice" for justice seekers who generally have very limited legal knowledge in order to solve any legal problems they are facing.

This can be seen in the contents of Articles 54 and 56 of the Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Code.

Article 54 states:

In the interest of defence, a suspect or defendant has the right to receive legal assistance from one or more legal advisers during the time and at every level of examination, according to the procedures determined in this law.⁴⁹

Article 56 paragraph (1):

In the event that a suspect or defendant is suspected or charged with committing a crime that is punishable by death or fifteen years or more, or for those who are unable to afford it, who does not have their own legal counsel.

The definition of an advocate is contained in Article 1 paragraph (1) of the Advocate Law which reads:⁵⁰ Advocate is a person whose profession is providing legal services both inside and outside the court that meets the requirements based on the provisions of the law.

So that the role and function of an advocate includes both work carried out inside and outside the court on criminal, civil and constitutional law issues. It is understood that advocates have the qualifications and authorization to practice in court in providing legal advice and accompanying and defending their clients in legal matters, so that the freedom of the advocate profession is very important for people who need legal services (legal services) and defense (litigation) from an advocate. A member of the public who needs to be defended will receive legal services from an independent advocate, who can defend all the interests of his clients.⁵¹

C. Legal Protection of the Right to Immunity in Indonesian Laws.

In the criminal justice system in Indonesia regarding the right to immunity possessed by advocates it is still not clearly understood because the scope limitations of the right to immunity itself are still not able to provide a uniform understanding for law enforcers due to the different legal interests. different for the sake of maintaining the value of justice and balance.

1. In the context of criminal law, it is generally known as the principle (equality before the law). This legal principle emphasizes that all people have equal rights before the law and no one is immune from the law.
2. Legal protection for the advocate profession based on Law Number 18 of 2003 concerning Advocates, the advocate's right which may be said to be the most central is having the right of legal immunity (immunitet) not to be prosecuted both civilly and criminally for carrying out his professional duties in good faith in court proceedings, this right of immunity is related to the recognition that an advocate cannot be identified with his client by the authorities or the public.
3. In the criminal justice system in the country of Indonesia which aims to safeguard basic human rights in life in the world and can provide a balance value and a value of justice for society, especially for justice seekers and as a measuring tool for existing law enforcers such as the police, prosecutors, judges and advocates in incarnating patterns of rules, both in the form of norms and products of statutory regulations as positive law.

The enforcement of this criminal law, Lawrence M. Friedman, who examined the legal system, stated that there are three components that determine the functioning of a law (in this case criminal law), namely structure, legal substance, and its legal culture. From these three components, according to Friedman, we can analyze the operation of law as a system.⁵²

From the description put forward by Friedman, it appears that the structural elements of a legal system include various institutions created by the legal system with various functions in the framework of the functioning of the system. One of these institutions is the court, while the substance component includes everything that is the result of the structure, including legal norms in the form of regulations, decisions, and doctrines. Friedman further said that if you think about it a little, the legal system does not only consist of structure and substance. There is still a need for a third element for the functioning of a legal system, namely legal culture.

Justice is about respect for the rights that should be given to justice seekers in court requests. The attainment and granting of these rights is necessary as a tribute to fairness in the process and opportunities to use court legal remedies.

⁴⁹ Law No. 8 of 1981 concerning the Law on Criminal Procedure, (Jakarta:, 1998), p. 60.

⁵⁰ Law Number 18 of 2003 Concerning Advocates, (Tangerang: SL Media, 2011), p. 12.

⁵¹ Frans Hendra Winarta, *Advokat Indonesia, Cita, Idealisme, dan Keprihatinan*, (Jakarta: Sinar Harapan, 1995), hlm. 36-37

⁵² Lawrence Friedman. *America Law an Introduction*, as translated by (Jakarta: PT Tatanusa.1984). p. 6-7.

Implementation in realizing equal justice must expand the meaning of justice by opening up opportunities to receive, examine, adjudicate and decide on requests to conduct trials submitted by advocates whose right to immunity is ignored by other law enforcers, judges as one of the pillars of law enforcement and the interests of victims of criminal acts as a form of wisdom to maintain the values of justice and balance in the eyes of the law.

Justice is related to the respect for the rights that should be given to the parties seeking justice with regard to the rights owned by a person, both naturally attached and because of a law which becomes a positive law that must always be obeyed. The right of advocate immunity which presents legal responsibility for all law enforcers based on trust rather than legal products from an existing legislation becomes a guideline for law enforcers in order to achieve the values of justice and balance in the legal arena.

Jhon Stuart Mill conveyed different things, namely as follows:⁵³

"There is no theory of justice that can be separated from the demands of expediency. Justice is the term given to the rules that protect claims that are considered essential for the welfare of society, claims to hold promises are equally necessary and so on. In this stage of justice, the concept of justice focuses more on protecting claims. The purpose of the claim is to increase welfare and hold promises equally. Equally means that the position of people is equal (equal in height) of equal position or balance.

New problems arise when these advocates are carrying out their capacity in providing legal services to clients, especially in defending clients. The existence of this problem is related to the efforts made by advocates in defending their clients, both inside and outside the courtroom who are considered and or considered to have violated the provisions of the criminal law in force in Indonesia.

So that these advocates can be criminalized with the subjectivity of other law enforcers who have a different legal perspective from advocates when carrying out their capacity in defending clients, which of course will have an impact on the performance of the advocate himself when carrying out his capacity in defending clients.

Hart's view of "utilitarianism" suggests the principles of justice, namely:⁵⁴

"In various applications of the concept of justice that individuals before others are entitled to a relative position in the form of certain equality or inequality. It is something that must be considered in the uncertainty of social life when burdens or benefits are to be recovered when disturbed. From there, according to the tradition, justice is seen as the maintenance or restoration of balance or proportion, and the main principles are often formulated as the treatment of things that are similar and not similar. Nevertheless we need to add to it and treat different things in different ways."

But every advocate has immunity (right of immunity) in carrying out his duties as an independent advocate. The right of immunity is the freedom of an advocate to take or not take any action and issue opinions, statements or documents to anyone while carrying out their professional duties, so that he cannot be punished as a consequence of carrying out his professional duties.⁵⁵

The freedom referred to here is against and because of their actions towards advocates and their clients there is no pressure, threat, obstacle, fear or treatment that demeans the dignity of the advocate profession so that they can carry out their roles and functions to carry out the advocate profession as a whole and truthfully. without pressure and intimidation as well as intervention from parties that can harm the interests of their clients, especially in legal handling carried out for the benefit of their clients.

According to Soerjono Soekanto, the effectiveness of law enforcement always depends on the relationship between four factors in society, namely:⁵⁶

1. factors of laws and regulations;
2. factors of law enforcement officers;
3. factor of available facilities or infrastructure;
4. community factors (community legal awareness).

Legal protection for the advocate profession based on Law Number 18 of 2003 concerning Advocates, the advocate's right which may be said to be the most central is the right to legal immunity (immunitet) so that he cannot be prosecuted both civilly and criminally for carrying out his professional duties in good faith in court court, this right of immunity is related to the recognition that an advocate cannot be identified with his client by the authorities or the public.

The right of immunity is the freedom of an advocate to take or not take any action and issue or not issue opinions, statements or documents to anyone in their professional duties, so that advocates cannot be punished as a consequence

⁵³ Keren Lebacqz, *Theories of Justice*, (Bandung: Nusa Media, 2008), p. 23.

⁵⁴ H.L.A Hart, *The Concept Of Law.*, (Bandung:Nusa Media, 2010), p. 246, translated by M.Khosim

⁵⁵ H.P.Panggabean, *Advocacy Management*, (Jakarta: P.T. Alumni, 2010), p. 151.

⁵⁶ Soerjono Soekanto, *Factors Affecting Law Enforcement*, (Jakarta: Raja Grafindo Persada, 1993), p. 53.

of carrying out their professional duties as an advocate. The scope of the implementation of advocate immunity rights is often unknown so that misunderstandings often occur between advocates and investigators regarding this matter. Munir Fuady is of the opinion that advocates have the right of immunity which applies in two scopes: the right of immunity within and outside the court hearing.⁵⁷

This provision is a reflection of the protection of human rights within the framework of "the rule of law" which in this case is the protection of documents and files belonging to clients from an advocate. This protection is also a person's right as a power of attorney, representing, accompanying, defending and taking other legal actions to safeguard the legal interests of his client.

The concept of a rule of law as explained in the 1945 Constitution creates logical consequences regarding the need for the role and function of an advocate as a free, independent and responsible profession in order to uphold the rule of law and justice including human rights.

The need for the role and function of the advocate is also part of the implementation of the sharing of the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law (equality before the law).⁵⁸ Therefore, an Advocate as one of the elements of the justice system is one of the pillars in upholding the rule of law and human rights.⁵⁹

Advocates also have the right to freedom of expression and cases in court which are their responsibility. Therefore, the right to obtain information, data and other documents, both from government agencies and parties related to the interests required for the defense of their clients in accordance with laws and regulations.

Talking about law enforcement and criminal responsibility is of course based on the principle of legality. Where this legality in the science of criminal law is interpreted as the principle of "Nullum Delictum Nulla sine praevia lege poenali" meaning (no one may be convicted without a binding rule beforehand).

With regard to a person's criminal responsibility, it is necessary to know the elements of that person's actions. Does a person's actions contain an element of error or in other words the person's actions are actions that are against the law. Does a person have the ability to be held accountable for his actions?

In the context of criminal law, it is generally known as the principle of "Equality Before The Law". This legal principle emphasizes that all people have equal rights before the law and no one is immune from the law. This means that in criminal law there is no such thing as special privileges against someone. Even if an Advocate commits a mistake or acts contrary to the law, he must be held criminally responsible.

As a sign of the Advocate's moral responsibility, the Advocate has 5 dimensions of struggle, namely:

1. Human dimension;
2. Dimensions of moral responsibility;
3. The dimension of freedom;
4. Dimensions of legal state development;
5. The dimension of democracy development.

Law Number 4 of 2004 concerning amendments to Law Number 48 of 2009 concerning Judicial Power in Articles 56 and Article 57 regulates the obligation of Advocates in providing legal assistance to people who cannot afford it. Advocate, Advocate obligations are also described in the 2002 Advocate code of ethics.

According to Prof. MardjonoReksodiputro regarding Advocate obligations:

1. Advocates' obligations to the community, this obligation arises as a responsibility towards the profession. As for these obligations:
 - a. Ensure that those who have become Advocates always have commitment, competence and integrity in carrying out their duties and work as Advocates;
 - b. Be courageous and willing to refuse those who are proven unfit to carry out the honorable profession of being an Advocate (to expose the abuses of which they know that certain of their brethren are quality). Including the principle of "upholding the honor of the profession" means that advocates must maintain the honor and dignity of the profession and always try to improve the justice system as well as the law (the administration of justice).
2. Advocates' obligations to professional colleagues, in chapter IV of the Advocate code of ethics which regulates the relationship of Advocates with their colleagues. In practice, the competition among the Advocate

⁵⁷ Munir Fuady, Noble Profession, (Bandung: PT. Citra Aditya. 2005), p. 30.

⁵⁸ Binziad Kadafi et.al. Indonesian Advocates Seeking Legitimacy: A Study of the Responsibilities of the Legal Profession in Indonesia, (Jakarta: Center for Law and Policy Studies, 2001), p. 206-207.

⁵⁹ Adnan Buyung Nasution, Constitutionalism Currents of Thought: Advocate. Said Hasta (Jakarta. Library. 2007), p. 24.

profession is very tight. Each Advocate shows their respective strengths. Both when in court and when out of court.

Responsibilities of Advocates besides having rights and obligations, Advocates also have responsibilities that must be carried out. Responsibility means an Advocate's awareness of his behavior or actions, whether intentionally or unintentionally while carrying out his duties.

According to Ishaq outlines some of the responsibilities of Advocates, namely as follows:

- a. Responsibilities to the state.
- b. Responsibilities to society.
- c. Responsibilities to God, Advocates uphold justice and truth.
- d. Responsibilities to Clients.
- e. Responsibilities to the Court.

Even though there are clear legal provisions regarding advocate immunity rights, in reality there are still legal cases that make advocates suspects and/or accused when the advocate is exercising his capacity in his role and function as law enforcement in defending clients.

The function of an advocate defending his client is to uphold the "presumption of innocence".⁶⁰ In accordance with the provisions stipulated in the International Covenant on Civil and Political Rights or the International Convention on Civil and Political Rights in Article 14 paragraph (2) and paragraph (3), the translation is more or less as follows:

1. Anyone charged with committing a crime has the right to be presumed innocent until proven guilty according to law;
2. When determining the charge of any crime against a person, he is entitled to a minimum guarantee in the fulfillment of justice, namely:
 - a. Immediately notified and in a language that he understands regarding the nature and causes of the accusations directed at him;
 - b. Have sufficient time and facilities to prepare his defense and communicate with the attorney of his choice;
 - c. Strive to avoid undue delays;
 - d. It is sought to appear and defend himself or through legal assistance of his own choice, to be informed of what charges have been set against him, or whatever is really necessary for the sake of justice and without having to pay if he does not have the money to pay for it;
 - e. Investigate, or have an investigation into, witnesses on their behalf under the same conditions as witnesses on their own behalf;
 - f. Obtaining the free assistance of an interpreter if he or she cannot understand or speak the language used in court;
 - g. Not forced to testify against himself or plead guilty.

International documents provide 3 principles of protection⁶¹ for Advocates:

1. The Basic Principles on the Role of Lawyer which provide recommendations to countries that are members of the United Nations organization provide protection for Advocates from all obstacles and pressure in carrying out their functions;
2. In the IBA standard (point 8) it states that an Advocate may not be punished and threatened with punishment whether in the realm of criminal, civil, administrative, economic or other sanctions and intimidation in carrying out work, giving advice to his client legally;
3. Declaration from "the World Conference on the Independence of Justice" which initiated the freedom of the Advocate profession in carrying out its functions by stating that there must be a fair system in administrative justice that guarantees the independence and independence of Advocates without threats, pressure, and intervention.

In the context of criminal law, it is generally known as the principle of "equality before the law". This legal principle emphasizes that all people have equal rights before the law and no one is immune from the law. This means that in criminal law there is no such thing as special privileges against someone. Even if an Advocate commits a mistake or acts contrary to the law, he must be held criminally responsible.

In the criminal justice system in the country of Indonesia which aims to protect basic human rights in life in the world and can provide a balance value and the value of justice for society, especially for justice seekers and as a

⁶⁰ Edi Krisharyanto, Advocate Profession in Law Enforcement, (Surabaya: FPS Univ. Airlangga, 2000), p. 1-2.

⁶¹ Bambang Heri Supriyanto, National and International Human Rights, (Jakarta: Azzahra Press University, 2016). p. 169.

measuring tool for existing law enforcers such as police, prosecutors judges and advocates in incarnating patterns of rules both in the form of norms and products of statutory regulations as positive law.

In law with regard to the public rights that are owned by every person who is an advocate profession with good ethics to carry out their duties and functions as part of law enforcers in order to create a sense of justice in society by maintaining dignity and values as a dignified profession to always maintain dignity. its essence as a pillar of independent and dedicated justice enforcers.

Raelita in real life that advocates in carrying out their roles and functions as law enforcers are often unable to carry out their profession in helping clients to seek justice and balance with regard to their rights as human beings. In this case there are factors of problems for law enforcers who always defend their clients by relying on the rules of law that apply with a sense of calm, comfort, guaranteed by positive law in Indonesia.

Advocates with inherent rights in their profession, namely the privilege of immunity in carrying out their duties and carrying out the mandate of the appropriate laws and regulations Law Number 18 of 2003 concerning Advocates without having to feel worried, intimidated, intervene so as to provide justice values for seekers justice.

The legal problems faced by an advocate in order to seek balanced justice for his client who is seeking justice because he is facing legal problems, in this case the problem faced by the advocate consists of several factors both from within his organization and from outside his organization.

Factors within the advocate organization include: there is not yet only one advocate organization (multy bar) due to various conditions, circumstances and interests that underlie advocate organizations, both existing and future, because there is still room to establish advocates, resources people who have a scientific point of view, habits, experience in handling different legal polemics, competition in providing legal services to clients, mis-communication between fellow advocates from different organizations and diverse legal interest angles all of which are due (motivation) of seasonal) needs, interests of each advocate organization.

External factors, namely the lack of understanding regarding the right of immunity attached to advocates with other law enforcers, statutory products that do not yet provide limitations on the right of immunity possessed by advocates with good ethics who carry out their roles and functions as law enforcers , the "stereotype" way of thinking of justice seekers who are still and haven't (so to speak) about the immunity right of a person who works as a lawyer. These things need to be managed by reforming the criminal law system in the criminal justice system in Indonesia so that it can provide positive energy space to present the values of balance and justice before the law.

One solution to this problem is to form a single bar for advocate organizations (single bar) that can monitor advocate behavior and can defend advocate rights that have been violated and establish a proportional cooperative relationship with other law enforcers (investigators, prosecutors, judges) in upholding justice system in Indonesia.

4. CONCLUSION

1. Advocate immunity rights in the principles and concepts are a special privilege attached to a person who works as an advocate with good faith when carrying out his role and function as one of the pillars in seeking justice for justice seekers to become a shield so that they can improve their performance inside or outside the court when accompanying clients.
2. The right of advocate immunity according to Indonesian law exists as a power bargaining for other law enforcers so that they always uphold the mandate that has been given by the laws and regulations that apply in Indonesia, mainly Law Number 18 of 2003 concerning Advocates
3. The protection of the right to immunity for advocates in the Indonesian criminal law system must be implemented in practice in the Indonesian judicial legal system in order to create the value of justice for justice seekers who use the legal assistance services of an advocate so that their rights are maintained when in legal trouble.

5. SUGGESTION

In the Indonesian criminal law system with regard to the legal protection of advocates' rights of immunity when carrying out the profession with good ethics, it must always be maintained and respected by other law enforcement agencies such as the police, prosecutors, judges so that it can become a space for obtaining justice for justice seekers based on the principle of balance in justice.

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